

Introduced by Senator Padilla

December 6, 2010

An act to add Section 4576 to the Penal Code, relating to prisons.

LEGISLATIVE COUNSEL'S DIGEST

SB 26, as amended, Padilla. Prisons:—~~cell phones~~—~~wireless communication devices~~.

Existing law prohibits unauthorized communication with inmates in state prison. *A person who violates that provision is guilty of a misdemeanor. Existing law further prohibits a person in a local correctional facility from possessing a wireless communication device, except as specified.*

~~This bill would declare the intent of the Legislature to enact legislation to impose sanctions for the possession of cell phones and other wireless devices by inmates in state prisons provide that if any nonemployee who is visiting an inmate or ward under the jurisdiction of the Department of Corrections and Rehabilitation, is found to be in possession of a wireless communication device, as defined, upon being searched or subjected to a metal detector, that device is subject to confiscation, except as specified. The bill would require that a notice to that effect be posted in each area where visitors are searched prior to visiting with an inmate or ward.~~

The bill would require, subject to certain exceptions, that any nonemployee who possesses with the intent to deliver, or delivers, to an inmate or ward, a wireless communication device is guilty of a misdemeanor, punishable by a fine not to exceed \$5,000. A subsequent violation of that provision, or the possession with intent to deliver, or

delivery of, 2 or more wireless communication devices to an inmate or ward, would be a misdemeanor punishable by 6 months in jail, and a fine not to exceed \$5,000 for each device.

The bill would also provide that an employee who possesses with intent to deliver, or delivers, one or more wireless communication devices is guilty of a misdemeanor punishable by a fine not to exceed \$5,000 for each device. For purposes of these provisions, an employee is defined to include a volunteer, as specified.

Existing law provides for the accumulation, denial, or loss of time credits for inmates of the Department of Corrections and Rehabilitation based on each inmate's behavior while under the jurisdiction of the department.

The bill would also provide that an inmate or ward who is found to be in possession of a wireless communication device would be subject to the denial of time credits, as specified. In addition, the bill would provide that, if an inmate or ward uses a wireless communication device in the commission or attempted commission of a crime, upon conviction of that crime, he or she would be punished, in addition and consecutive to the prescribed punishment, with imprisonment in the state prison for 2, 3, or 5 years.

Because the bill would create new crimes, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

*Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.*

The people of the State of California do enact as follows:

- 1 *SECTION 1. Section 4576 is added to the Penal Code, to read:*
- 2 *4576. (a) For purposes of this section, the following definitions*
- 3 *shall apply:*
- 4 *(1) "Wireless communication device" means any hand-held*
- 5 *device having the ability to receive or transmit voice, text, or data*
- 6 *messages without a cable connection, such as a cellular telephone,*
- 7 *digital wireless telephone, radiotelephone/walkie-talkie, telephone*

1 *pager, personal digital assistant with wireless communications*
2 *capabilities (PDA), or research in motion wireless device (RIM),*
3 *or any component thereof, including, but not limited to, a*
4 *subscriber identity module (SIM) card or memory storage device.*

5 (2) “Employee” means any departmental staff, contractor,
6 subcontractor, volunteer, agent of, or person working for, the
7 Department of Corrections and Rehabilitation or working in any
8 facility or location where inmates or wards are housed.

9 (3) “Volunteer” means any person working, without financial
10 compensation, for the Department of Corrections and
11 Rehabilitation or in any facility or location where inmates or wards
12 are housed.

13 (4) “Nonemployee” means any person who does not meet the
14 definition of “employee” in paragraph (2).

15 (b) (1) Except as otherwise authorized by law, or when
16 authorized by the person in charge of the prison or other facility
17 under the jurisdiction of the Department of Corrections and
18 Rehabilitation, if any nonemployee visiting an inmate or ward
19 under the jurisdiction of the department is found to be in possession
20 of a wireless communication device upon being searched or
21 subjected to a metal detector, that device shall be subject to
22 confiscation.

23 (2) Except as otherwise authorized by law, or when authorized
24 by the person in charge of the prison or other facility under the
25 jurisdiction of the Department of Corrections and Rehabilitation,
26 any nonemployee who possesses with the intent to deliver, or
27 delivers, to an inmate or ward under the jurisdiction of the
28 department a wireless communication device, is guilty of a
29 misdemeanor, punishable by a fine not to exceed five thousand
30 dollars (\$5,000).

31 (3) Any nonemployee who was previously convicted of a
32 violation of paragraph (2), who possesses with the intent to deliver,
33 or delivers, to an inmate or ward under the jurisdiction of the
34 department, one or more wireless communication devices, or any
35 nonemployee who possesses with the intent to deliver, or delivers,
36 to an inmate or ward under the jurisdiction of the department, two
37 or more wireless communication devices, is guilty of a
38 misdemeanor, punishable by six months in jail, and a fine not to
39 exceed five thousand dollars (\$5,000) for each device.

(c) Except as otherwise authorized by law, or when authorized by the person in charge of the prison or other facility under the jurisdiction of the Department of Corrections and Rehabilitation, any employee who possesses with the intent to deliver, or delivers, to an inmate or ward under the jurisdiction of the department, one or more wireless communication devices, is guilty of a misdemeanor, punishable by a fine not to exceed five thousand dollars (\$5,000) for each device.

(d) (1) Any inmate or ward who is found to be in possession of a wireless communication device shall be subject to time credit denial or loss pursuant to paragraph (2) of subdivision (a) of Section 2932. Notwithstanding Section 2933, credits forfeited pursuant to this section shall not be eligible for restoration.

(2) Any inmate or ward under the jurisdiction of the Department of Corrections and Rehabilitation who, during the commission or attempted commission of a crime, uses a wireless communication device, shall, upon conviction of that crime, in addition and consecutive to the punishment prescribed for the crime of which he or she has been convicted, be punished by imprisonment in the state prison for two, three, or five years.

(e) Notice regarding paragraph (1) of subdivision (b) shall be posted in each area in which visitors are searched prior to visiting with an inmate or ward under the jurisdiction of the department.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

~~SECTION 1. The Legislature finds and declares all of the following:~~

~~(a) In 2006, prison officials confiscated 261 cell phones in California prisons.~~

~~(b) In 2009, 6,995 cell phones were confiscated in California prisons.~~

~~(c) According to the Department of Corrections and Rehabilitation, prison officials have found 7,000 cell phones in~~

1 California prisons since January 1, 2010, which would amount to
2 another record year of seizures, at a projected rate of over 9,600
3 cell phones in 2010.

4 For these reasons, it is the intent of the Legislature to enact
5 legislation to impose sanctions for the possession of cell phones
6 and other wireless devices by inmates in state prisons.

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